IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL REVISION APPLICATION No 357 of 2003

For Approval and Signature:

HON'BLE MR.JUSTICE D.P.BUCH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

RAMUBHAI LAXMANBHAI VASAVA

Versus

MINOR LINABEN RAMUBHAI

Appearance:

1. Criminal Revision Application No. 357 of 2003

MR BJ TRIVEDI for Petitioner No. 1

MR JT TRIVEDI for Petitioner No. 1

MR HIMANSHU TRIVEDI for Petitioner No. 1

MS JIGNASA B TRIVEDI for Petitioner No. 1

MR DN PANDYA for Respondent No. 1-2

MR SS PATEL APP for Respondent No. 3

CORAM : HON'BLE MR.JUSTICE D.P.BUCH

Date of decision: 16/10/2003

ORAL JUDGEMENT

This is a revision application filed by the petitioner herein, challenging an order dated 13/06/03 passed by the learned Judicial Magistrate, First Class at Rajpipla in Cr.Misc.Appl.No.33/2003.

2. It appears from the record that on behalf of minors Linaben and Anandbhai, an application u/s.125 of the Code of Criminal Procedure, 1973 (for short, "the Code") was submitted before the above Court. The said application appears to have been allowed. An application being Cr.Misc.Appl.No.33/03 was also filed by the grandfather of the said two minor children, on behalf of the minors, for recovery of the amount in question.

3. At the time of disbursement of the said amount, the present petitioner submitted to the trial court that the grandfather of the minors should be directed to submit accounts of the amount received from the Court and spent by him for and on behalf of the minors. In the alternative, it was prayed that the guardian be directed to declare that the said amount of maintenance has been utilized for the said minors. In the meantime, a stay order was also prayed, requiring the Court not to disburse the said amount to the said guardian. The trial court dismissed the said prayer for stay and directed that the amount in question be paid to the said two minors, under joint signatures of minor Linaben & guardian Ishwarbhai. Feeling aggrieved by the said order of the trial court, the petitioner has preferred this revision application before this Court.

4. It has been contended here that the grandfather is not the natural guardian and has not been appointed as a guardian for the person or property of the said two minors. Therefore, he had no authority to make any application before the trial court or to receive the aforesaid amount from the Court, for and on behalf of the minors. That, therefore, the order of the trial court is ex-facie illegal and deserves to be set aside.

5. On receipt of the revision application, Rule was issued and in response to the service of notice of Rule Mr.D N Pandya learned advocate has appeared on behalf of respondents no.1 and 2 and Mr.S S Patel learned APP has appeared on behalf of the State. I have heard the learned advocates for the parties and have perused the papers.

6. The fact that an order u/s.125 of the said Code had been passed against the petitioner and in favour of

the two minors, respondents no.1 & 2 herein, is not in dispute. The only question which is required to be decided is as to whether the grandfather of the minors can receive the amount in question, for and on behalf of the two minors.

7. The learned advocate for the petitioner has contended that the grandfather has not been appointed as a guardian and under the Hindu Laws, a grandfather is not a natural guardian and therefore, he cannot act as a guardian for and on behalf of the minors.

8. The records show that the application for maintenance on behalf of the minors was submitted by the guardian and the mother of the two minors. However, subsequently, the mother of the two minors appears to have left the place and to have contracted second marriage elsewhere. Moreover, she has not been staying with the said two minors. Therefore, the two minors have been staying with their grandfather.

9. In that view of the matter, when this fact is undisputed and when the two minors have been staying with their grandfather, then in that event, an application for the recovery of the amount of maintenance deposited in the Court, by the grandfather, as a guardian of the minors, cannot be treated to be an illegal prayer made by him. This being a criminal matter, appointment of a guardian for a minor, is not a sine qua non. The learned advocate for the petitioner has drawn my attention to the provisions made in S.128 of the said Code. There, it has been mentioned that a copy of the order of maintenance shall be given without payment to the person in whose favour it is made, or to his guardian, if any, or to the person to whom the allowance is to be paid; and such order may be enforced by any Magistrate in any place where the the person against whom it is made may be, on such Magistrate being satisfied as to the identity of the parties and the nonpayment of the allowance due.

10. It is, therefore, clear that the certified copy is required to be given either to the person in whose favour an order is made or to his guardian, if there is any. In the present case, we find that in absence of any other person to look after the minors, the grandfather has assumed guardianship and I am of the view, that in view of the fact situation wherein the father of the minors is an opposite party and when the mother has left the two minors in the custody of the grandfather, then in that event, the action of the grandfather, assuming guardianship of the two minors, cannot be considered to

be illegal. In other words, it cannot be said that the guardian - grandfather herein, cannot act as a guardian in the aforesaid fact situation.

11. In above view of the matter, the order passed by the trial court cannot be said to be illegal. In that case, there is no reason to interfere with the said order in exercise of revisional jurisdiction.

12. For the foregoing reasons, this revision application is dismissed. The impugned order of the trial court stands confirmed. Rule discharged.

(D. P. Buch, J.)

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